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**Capital Iron Works Company and Boilermakers Local Lodge 83, affiliated with International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO.**  
Case 17-CA-24499

July 11, 2011

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS BECKER, PEARCE, AND HAYES

The Acting General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the compliance specification. On March 15, 2010, the Board issued a Decision and Order,<sup>1</sup> finding that the Respondent violated Section 8(a)(5) and (1) of the Act, and directing the Respondent to, among other things: (1) make employees Darren Janssen, Gary King, and Christopher Ortega whole for losses caused by the Respondent's failure to grant them periodic wage increases in accordance with its collective-bargaining agreement with the Union; (2) make all required 401(k) contributions that were not made for hours worked by unit employees in 2008, including any additional amounts due the plan; and (3) make employee Kermit Schrenk whole for losses due to the Respondent's failure to reimburse him for safety glasses at the monetary level specified in the collective-bargaining agreement. On August 26, 2010, following the United States Supreme Court's decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct 2635 (2010), the Board issued a Decision and Order<sup>2</sup> adopting the findings of fact, conclusions of law, remedy, and Order set forth in the Decision and Order reported at 355 NLRB No. 20. On October 12, 2010, the United States Court of Appeals for the Tenth Circuit, in an unreported decision, entered its judgment enforcing, in full, the provisions of the Board's Order.<sup>3</sup>

A controversy having arisen regarding the amount of backpay and other benefits due under the terms of the Board's Order, on March 31, 2011, the Regional Director issued a compliance specification and notice of hearing alleging the amounts due under the Board's Order, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification,<sup>4</sup> the Respondent failed to file an answer.

<sup>1</sup> 355 NLRB No. 20.

<sup>2</sup> 355 NLRB No. 138.

<sup>3</sup> No. 10-9555.

<sup>4</sup> Although the Region originally mailed the compliance specification to the Respondent at an address that contained a typographical error, the Region also mailed it to another known address of the Respondent. The U.S. Postal Service's "Track and Confirm" system confirms that the mailing was delivered to that other address. Additionally,

By letter dated April 22, 2011, the Region advised the Respondent that no answer to the compliance specification had been received and that unless an answer was filed by May 6, 2011, a motion for default judgment would be filed with the Board. To date, the Respondent has failed to file an answer.

On May 12, 2011, the Acting General Counsel filed with the Board a Motion for Default Judgment, with exhibits attached. On May 13, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 19, 2011, a revised Notice to Show Cause issued, noting that the original Notice was served on the Respondent at an incorrect address. The Respondent filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on the Motion for Default Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that a respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) provides that if the respondent fails to file an answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the motion for default judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and we grant the Acting General Counsel's Motion for Default Judgment.

Accordingly, we conclude that the net backpay due the discriminatees is as stated in the compliance specification, and we will order the Respondent to pay those amounts to the discriminatees, plus interest accrued to the date of payment.

**ORDER**

The National Labor Relations Board orders that the Respondent, Capital Iron Works Company, Topeka, Kansas, its officers, agents, successors, and assigns, shall make whole the individuals named below, by paying them the amounts following their names, plus interest accrued to the date of payment, as prescribed in *New*

as the Acting General Counsel indicates in a May 18, 2011 letter to the Board which was served on the Respondent, the Respondent's registered agent, Mike Buckner, in a May 10, 2011 telephone call with the Region, acknowledged that he received the documents. Therefore, it is undisputed that the Respondent was served with the compliance specification.

*Horizons for the Retarded*, 283 NLRB 1173 (1987), minus tax withholdings required by Federal and State laws:<sup>5</sup>

<sup>5</sup> The Board has declined to apply its new policy, announced in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), of daily compounding of interest on backpay awards, in cases such as this, that were already in the compliance stage on the date that decision issued. *Rome Electrical Systems, Inc.*, 356 NLRB No. 38, slip op. at 1 fn. 2 (2010).

First Name	Last Name	Respondent's 401(k) Liability	Respondent's Backpay Liability	TOTAL
Arnulfo	Arizpe	\$2,132.49		\$2,132.49
William	Braumann	2,094.33		2,094.33
Billie	Cohee	2,153.73		2,153.73
Kyle	Cox	302.64		302.64
Brian	Dougan	211.61		211.61
Matthew	Duane	3,799.80		3,799.80
Leland	Essman	985.79		985.79
Robert	Garst	1,126.35		1,126.35
Marcus	Hayes	345.77		345.77
Darren	Janssen	1,632.48	\$662.00	2,294.48
Gary	King	2,220.92	462.00	2,682.92
Eric	Lemus	363.82		363.82
Jorge	Lopez, Jr.	481.33		481.33
Michael	Odell	2,430.63		2,430.63
Christopher	Ortega	1,454.10	64.00	1,518.10
Vence	Purdum	1,561.52		1,561.52
Kermit	Schrenk, Jr.	3,182.68	50.00	3,232.68
David	Siska	217.72		217.72
Brian	Stevenson	68.17		68.17
Andrew	Taylor	993.61		993.61
Billie	Todd	1,108.63		1,108.63
TOTAL		\$28,868.12	\$1,238.00	\$30,106.12 <sup>6</sup>

Dated, Washington, D.C. July 11, 2011

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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Craig Becker, Member

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Mark Gaston Pearce, Member

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Brian E. Hayes, Member

<sup>6</sup> The compliance specification incorrectly lists the Respondent's total 401(k) liability as \$28,868.10. The backpay Order reflects the correct total. Correspondingly, the compliance specification incorrectly lists the total backpay award as \$30,106.10. The backpay Order reflects the correct total.